

**TRANSPORTATION DEPARTMENT[761]**

At a meeting held on June 13, 1990, the Administrative Rules Review Committee voted to object to 761 IAC 450.1 on the grounds that it is unreasonable. This provision is a general adoption by reference of federal motor vehicle safety standards. The committee objection relates to only one specific portion of those standards; 49 CFR part 571.205 of those adopted federal standards which contains National Highway Traffic Standard 5.1.1, which in turn adopts by reference American National Standard Z26.1(1983). This "ANSI" standard specifies an opacity level of 70 percent light transmission for certain motor vehicle windows. It was the committee opinion that it was unreasonable to enforce this controversial standard without having it published in Iowa and readily available to Iowa motorists and professional window tinters.

Iowa has limited the amount of tinting on automobile windows since 1983 when the legislature enacted Iowa Code subsection 321.438(2), which states:

2. A person shall not operate on the highway a motor vehicle equipped with a front windshield, a side window to the immediate right or left of the driver, or a side-wing forward of and to the left or right of the driver which is excessively dark or reflective so that it is difficult for a person outside the motor vehicle to see into the motor vehicle through the windshield, window, or sidewing. The department shall adopt rules establishing a minimum measurable standard of transparency which shall apply to violations of this subsection.

Pursuant to this mandate the Department of Transportation has adopted the federal standards by reference (see: 761 IAC 450.1). The federal provisions are contained in 49 CFR parts 501-590 (1987). The actual subject of this objection, "ANSI" standard Z26.1, was adopted by reference in 49 CFR 571.205.

The practical problem with this filing is a double adoption by reference. The Iowa rule adopts a federal rule by reference; which in turn adopts a non-governmental standard by reference. This raises the question of the adequacy of the publication of the standard. Professor Arthur Bonfield has stated in Bonfield, State Administrative Law, 390 (Little, Brown & Co. 1986):

Publication of agency rules is important because it facilitates easy public access to them. That access allows affected parties to ascertain the contents of rules and to adjust their conduct accordingly. Limited availability of agency rules creates serious possibilities that individuals may be prosecuted for violating rules that were not only unknown to them, but that could not have been easily discovered...

The present situation is a "textbook example" of that problem. While the opacity standard has been lawfully adopted by reference, it is printed in an obscure handbook published in the state of New York. The Iowa rule does not refer specifically to tinted windows, and even though the regulation has been in effect since 1986, many members of motoring public and professional window tinters were not aware of its existence until concerted enforcement began in 1990. The Department of Transportation has taken some steps to make the federal standards available in Iowa. Copies of the standards, including the ANSI Z26.1 standard, are available from the department as provided in paragraph 761 IAC 450.1(7)"b." However, since that provision contains no reference to a window tinting standard, making a standard available to the public does little good if the public has no actual notice that a particular requirement exists.

The rule at issue itself has been specifically examined by a lower Iowa Court. In State v. Beckwith, case no. P 475308 (Assoc. D.C., 1987) an associate district court judge opined that Iowa Code section 321.438(2) was unconstitutional “as violating due process standards of specificity and notice.” The committee is aware that a decision of a district associate court has no state-wide precedential value, but does feel that the holding of the case is well founded when it was stated:

[T]his Court now holds that a statute with criminal penalties which delegates a standard to an administrative agency, which by reference then adopts a standard of another administrative agency, which itself adopts by reference a standard of an industry, which standard is not generally available to the community, in fact furnishes no standard at all for a due process evaluation.

The point both Bonfield and the associate district court make is that people are entitled to ready access to the regulations they must obey. This principle must be somewhat relaxed to allow for efficient program administration. Adopting materials by reference is essential to prevent the Iowa Administrative Code from becoming the size of the federal code. Generally adoption by reference presents no problem since these regulations tend to apply to narrow and specialized groups, such as engineers or home builders. These groups already have ready access to the adopted material. In other cases, such as seat belts in motor vehicles, the Code of Iowa itself adopts specific federal standards, which puts Iowans on legal notice that the cited federal standards are adopted as part of Iowa’s Code.

In the present case, violation of the referenced standard is a public offense that will apply to thousands of motorists; virtually none of whom have direct access to the “ANSI” publication containing this standard. While the substance of the standard itself is lawful, it is also unreasonable to subject Iowans to a mandate which is buried away in an obscure New York publication, with only limited availability within the state. As a practical matter, it is unnecessary to burden the Iowa publication system by adding to the administrative code the entire bulk of the federal and ANSI standards. For virtually all of these provisions the current system of adoption by reference, coupled with copies made available through the Department of Transportation, is sufficient. The tinting standard is somewhat unique in that large numbers of motorists have chosen to over-tint their windows, unaware that the standard existed. Since this regulation appears to have a larger impact on Iowa motorists than any other federal standard, the best solution at this time would be for the department to promulgate an amendment to 761 IAC 450 setting out the ANSI tinting requirement in the text of the rule.

The committee would also note that concerns have been expressed by persons suffering from severe light sensitive conditions that make heavily tinted windows essential for health reasons. The committee would request that any additional rule-making include a waiver provision that would allow persons to apply a darker tint on automobile windows if such a need is documented by a physician.